

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BOARD OF TRUSTEES OF THE UFCW LOCAL 50
PENSION FUND,

Plaintiff,

-against-

MEMORANDUM & ORDER
13-CV-1888 (JS) (SIL)

BAKER HILL PACKING INC.,

Defendant.

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APPEARANCES

For Plaintiff: Anthony S. Cacace, Esq.
Proskauer Rose LLP
11 Times Square
New York, NY 10036

Ira D. Wincott, Esq.
Law Office of Ira D. Wincott, PLLC
8 Gilbert Lane
Plainview, NY 11803

For Defendant: No appearances.

SEYBERT, District Judge:

Pending before the Court is (1) plaintiff Board of Trustees of the UFCW Local 50 Pension Fund's ("Plaintiff") motion for default judgment (Docket Entry 12); and (2) Magistrate Judge Steven I. Locke's Report and Recommendation ("R&R"), recommending that this Court grant the motion for default judgment (Docket Entry 14). For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

Plaintiff commenced this action on April 5, 2013 against defendant Baker Hill Packing Inc. ("Defendant"), seeking to recover for withdrawal liability and related relief pursuant to Employee Retirement Income Security Act of 1974 and a collective bargaining agreement. On April 4, 2014, Plaintiff filed an affidavit of service, affirming that the Summons and Complaint were served on Defendant on March 27, 2014.¹ (Docket Entry 9.) Defendant did not answer or otherwise respond to the Complaint, and Plaintiff requested a Certificate of Default on April 30, 2014. (Docket Entry 10.) That same day, the Clerk of the Court certified Defendant's default. (Docket Entry 11.) On August 8, 2014, Plaintiff moved for a default judgment. (Docket Entry 12.)

On August 22, 2014, the undersigned referred Plaintiff's motion to Magistrate Judge Steven I. Locke for a report and recommendation as to "whether the pending motion should be granted and, if necessary, to determine the appropriate amount of damages, costs, and/or fees to be awarded." (Docket Entry 13.)

On January 29, 2015, Judge Locke issued his R&R. (Docket Entry 14.) The R&R recommends that the Court grant default judgment and award Plaintiff's \$525,259.49 in damages, attorneys' fees, and costs as follows: (1) \$394,482 for outstanding

¹ Plaintiff had previously moved for an extension of time to serve Defendant, which Magistrate Judge William D. Wall granted.

withdrawal liability; (2) \$46,494.84 in prejudgment interest on the withdrawal liability; (3) \$78,896.40 in liquidated damages; (4) \$4,736.25 in attorneys' fees; and (5) \$650 in costs; as well as (6) daily interest through the entry of judgment at a rate of \$64.85 per day. (R&R at 2, 28.)

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Locke's R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Locke's R&R (Docket Entry 14) is ADOPTED in its entirety and Plaintiff's motion for a default judgment (Docket Entry 12) is GRANTED. The Clerk of the Court is directed to enter

judgment in favor of Plaintiff and against Defendant as follows:

(1) \$394,482 for outstanding withdrawal liability; (2) \$46,494.84 in prejudgment interest on the withdrawal liability; (3) \$78,896.40 in liquidated damages; (4) \$4,736.25 in attorneys' fees; (5) \$650 in costs; and (6) daily interest through the entry of judgment at a rate of \$64.85 per day. The Clerk of the Court is directed to mark this matter CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: February 27, 2015
Central Islip, NY